

Vernon Dorsey
CONSTITUTIONAL AMENDMENTS.

SPEECH

OF

Hon. Henry J. Raymond, of New York,

ON THE

PROPOSED AMENDMENT OF THE CONSTITUTION;

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, MAY 9, 1866.

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THE AMENDMENT OF THE CONSTITUTION.

The plan of Reconstruction reported by the Joint Committee of Fifteen on that subject contained a Resolution proposing the following Amendment to the Constitution:

ARTICLE —.

SEC. 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States which may be included within the Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any State, the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age.

SEC. 3. Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States.

SEC. 4. Neither the United States nor any State shall assume or pay any debt or obligation already incurred, or which may hereafter be incurred, in aid of insurrection or of war against the United States, or any claim for compensation for loss of involuntary service or labor.

SEC. 5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

The House having this under consideration on the 9th of May—

Mr. RAYMOND said:

Mr. SPEAKER: I took occasion at an early stage of the session, while making some remarks on the general subject of restoration, to say that, in my judgment, the joint committee to which it had been referred, ought to lay the whole of their plan upon our tables before asking us to act upon any of its specific parts. I congratulate myself, sir, that, although when first made the demand was received with anything but favor, the commit-

tee now concede its justice by complying with it. It seemed to me then, as it seems to the committee now, that when a proposition embracing several branches more or less interdependent and all essential to the object sought to be attained, justice and fair dealing required that Congress should have possession of the whole case before being required to act upon any of its parts. We may see the result of a different course in the recent experience of the British House of Commons. That House was called on to consider a scheme of parliamentary reform, consisting of two branches, one an extension of the suffrage, and the other a reapportionment of representation, or, as they style it, a redistribution of seats. The ministry submitted its programme for the first but withheld the second. Thereupon a portion of the ministerial party demanded to see the whole plan before acting upon part of it. The ministry refused to comply, and the result of their refusal was that, although they commenced the session with a majority of sixty, they carried the bill on its second reading by the meager majority of five, in a House of over six hundred members.

I am glad to see that the reconstruction committee does not imitate the obstinacy of the British ministry. After long delay and several attempts to carry single parts of its proposition, it now submits the whole of the plan by which it proposes to restore the Union. I must say that I see nothing in the report which required any such delay, nothing which depends for its validity or force upon the evidence which, with such protracted pain, the committee has

spent five months in collecting. And it is fortunate for us that this is so, for Congress is not yet in possession of any considerable portion of the testimony. It has not yet been printed and laid upon our tables to guide our action.

But, sir, without dwelling further upon these preliminary matters, I will proceed to state the nature of the report which has thus been made. The programme of reconstruction reported by the committee consists of three parts: first, a series of five constitutional amendments, upon as many different subjects, each distinct from the other; and then two bills, one providing for the admission into Congress of Representatives from the States lately in rebellion upon certain conditions, and the other excluding from Federal offices for all time to come certain classes of persons who have been engaged in that rebellion. The House has ordered that these three propositions shall be taken up in succession, and the proposed amendments to the Constitution are the only topics which are properly before us for our action now. I concur fully in the suggestion of the President of the United States, that it would be wise, when acting upon amendments to the Constitution, that all the States to be affected by them should be represented in the debate. I do not understand him to hold, I certainly do not hold myself, that the presence of them all is essential to the validity of the action we may take; and inasmuch as they are to be submitted, if adopted by us, to all the States of the Union for their ratification, and as the assent of three fourths of all those States will be required to make them valid as parts of the Constitution, I am quite willing to take action upon them here even in the absence of those States which are as yet without representation.

And now, sir, with regard to these amendments, five in form, but only four in substance, I have this to say: that, with one exception, they are such as commend themselves to my approval. The principle of the first, which secures an equality of rights among all the citizens of the United States, has had a somewhat curious history. It was first embodied in a proposition introduced by the distinguished gentleman from Ohio, [Mr. BINGHAM,] in the form of an amendment to the Constitution, giving to Congress power to secure an absolute

equality of civil rights in every State of the Union. It was discussed somewhat in that form, but, encountering considerable opposition from both sides of the House, it was finally postponed, and is still pending. Next it came before us in the form of a bill, by which Congress proposed to exercise precisely the powers which that amendment was intended to confer, and to provide for enforcing against State tribunals the prohibitions against unequal legislation. I regarded it as very doubtful, to say the least, whether Congress, under the existing Constitution, had any power to enact such a law; and I thought, and still think, that very many members who voted for the bill also doubted the power of Congress to pass it, because they voted for the amendment by which that power was to be conferred. At all events, acting for myself and upon my own conviction on this subject, I did not vote for the bill when it was first passed, and when it came back to us from the President with his objections I voted against it. And now, although that bill became a law and is now upon our statute-book, it is again proposed so to amend the Constitution as to confer upon Congress the power to pass it.

Now, sir, I have at all times declared myself heartily in favor of the main object which that bill was intended to secure. I was in favor of securing an equality of rights to all citizens of the United States, and of all persons within their jurisdiction; all I asked was that it should be done by the exercise of powers conferred upon Congress by the Constitution. And so believing, I shall vote very cheerfully for this proposed amendment to the Constitution, which I trust may be ratified by States enough to make it part of the fundamental law.

The second amendment which is proposed to the Constitution relates to the basis of representation. That has also been already before this House for its action, and I have always declared myself in favor of the object it seeks to accomplish. As I remarked on a previous occasion, I do not think the South ought to gain a large increase of political power in the councils of the nation from the fact of their having rebelled, as they will do if the basis of representation remains unchanged. But when it was presented before it came in a form which

recognized by implication the right, of every State to disfranchise a portion of its citizens on account of race, color, or previous condition of servitude, and provided that whenever any portion of any race should be thus disfranchised by any State, the whole of that race within that State should be excluded from enumeration in fixing the basis of representation. As the gentleman from Pennsylvania [Mr. STEVENS] said yesterday, it provided that "if a single one of the injured race was excluded from the right of suffrage, the State should forfeit the right to have any of them represented;" and he added that he preferred it on that account. Well, sir, I did not. When it was presented before, the distinguished gentleman from Ohio [Mr. SCHENCK] made a very powerful argument against it. He showed that it tended directly to discourage every southern State from preparing its colored population for enfranchisement; that it deprived them of all inducement for their gradual admission to the right of suffrage, inasmuch as it exacted universal suffrage as the only condition upon which they should be counted in the basis of representation at all. I thought that argument entitled to great weight. I have never yet heard it answered. The gentleman from Ohio converted me to that view of the subject, and although he relinquished or waived it himself, I could not. I voted against a proposition which seemed to me so unjust and so injurious, not only to the whites of the southern States, but to the colored race itself. Well, sir, that amendment was rejected in the Senate, and the proposition, as embodied in the committee's report, comes before us in a very different form. It is now proposed to base representation upon suffrage, upon the number of voters, instead of upon the aggregate population in every State of the Union. And as I believe that to be essentially just, and likely to remedy the unequal representation of which complaint is so justly made, I shall give it my vote.

The third amendment embodied in this report is of an entirely different character. It provides that until the year 1870 all persons within the States lately in rebellion who "voluntarily adhered to the rebellion and gave it aid and comfort" shall be "excluded from the

right of voting for members of Congress and for electors of President and Vice President of the United States."

Now, the first thing that strikes my attention in this is, that this amendment recognizes these States as States, and as States within the Union. How else, upon what other ground, are they authorized to be represented at all? The amendment does not confer upon them any right of representation. It does not confer upon their people any right of voting. It recognizes their right to representation. It recognizes the general right of suffrage as belonging to the people of these States. It simply limits that right thus recognized as existing. It excludes a portion of the people from exercising that right of suffrage which in the absence of such exclusion they would possess. Now, this discards entirely the doctrine that these States are Territories, the doctrine that they are conquered provinces, and that their people are alien enemies, out of the Union and without rights of any kind. And so far it has my hearty approbation.

But, sir, it proposes to exclude the great body of the people of those States from the exercise of the right of suffrage in regard to Federal officers. The gentleman from Pennsylvania, [Mr. BROOMALL.] in his very ingenious argument this morning, attempted to show that it would not exclude more than one in twelve of the voters in the southern States. But it seems to me idle to enter into such calculations, which depend on a series of estimates, each one of which cannot be anything more than a wild and random guess. I take it that we all know perfectly well that the great masses of the southern people "voluntarily adhered to the insurrection;" not at the outset, not as being originally in favor of it, but during its progress, sooner or later, they voluntarily gave in their adhesion to it, and gave it aid and comfort. They did not all join the army. They did not go into the field, but they did, at different times, from various motives and in various ways, give it aid and comfort.

Well, sir, that would exclude the great body of the people of those States under this amendment from exercising the right of suffrage. It is proposed to permit those only who did not at any time nor in any way thus adhere to the

insurrection to vote for members of Congress and for presidential electors. I do not think they would number more than one tenth of the whole population. But even if they should number one eighth or one fifth they would still constitute but a very small portion of the people to be clothed with the exclusive powers of government. They would still constitute a government oligarchical and not republican in form. Yesterday the chairman of the joint committee on reconstruction, [Mr. STEVENS,] in his forcible remarks introducing this report, took ground against admitting the members-elect from Tennessee and Arkansas because they do not represent their constituents. "Do not tell me," said he, "that there are loyal representatives waiting for admission; until their States are loyal they can have no standing here, for they would merely misrepresent their constituents." And yet he proposes that we shall allow one fifth, one eighth, or one tenth, as the case may be, of the people of these southern States to elect members from those States, to hold seats upon this floor. Now, would not men thus elected in the most emphatic sense misrepresent their constituents? How can the gentleman from Pennsylvania favor such a proposition as this, which is certain to secure members who will not truly represent their States, when he refuses admission to the loyal delegation from Tennessee? By what process of reasoning can he reconcile the admission of members in the one case, while he denies it so obstinately and scornfully in the other? It is true this provision is temporary; but the effect of it while it lasts must be to plant seeds of discontent and dissension in the southern States which will survive by scores of years the immediate cause out of which they grew.

The gentleman from Maine [Mr. BLAINE] yesterday made what seemed to me to be a very strong point—that this disfranchisement of the large body of the southern people would run counter to the terms of the amnesty proclamation of President Lincoln, which restored all but certain classes to their former rights. I think there is great force in that objection. But however this may be as a point of technical construction—and I shall not canvass it in that light—there is certainly great force in

this objection, that this provision would be a departure, a retraction from the assurances given all through this war, by acts and resolutions of Congress and by proclamations of the President. Every declaration from any department of the Government conveyed to the South and to the whole country the assurance that the war was waged for the sole purpose of suppressing the rebellion, and that when it was over all the States would be restored to the Union in full possession of all their rights and on a footing of equality with the other States. I know it may be said that we were there in perplexity and in peril, and that it was essential to the harmony of public sentiment and to the vigorous prosecution of the war that these declarations and pledges should be made. I know, too, how general is the truth that "ease will retract vows made in pain." But it is not a pleasing spectacle to see a great nation like this shrinking from the fulfillment of pledges under which it carried on the war, shrinking from the assurances it has given to the whole country, that upon the termination of the war the authority of the Constitution and the rights of the States should be restored. We should be at least as jealous of our honor now as we were of our safety then.

There is another objection which perhaps may not be entitled to much weight, but is worth consideration. This proposition to exclude the mass of the southern people from voting until 1870 exposes those who advocate and press it, it exposes the Union party to the suspicion, renders that party obnoxious to the charge of seeking to amend the Constitution for the purpose of influencing and controlling the presidential election of 1868. I make no such charge, but I know it will be made. Our vigilant opponents will not omit so tempting an opportunity to trace our action to motives of partisanship rather than patriotism. And I would not like to be put in a position where I shall be compelled to concede the charge, or where facts can be brought forward that would even seem to sustain it. It is quite true that the gentleman from Pennsylvania [Mr. STEVENS] accepted what he took to be a suggestion on my part the other day, that General Grant might be the candidate of the Union party for the Presidency in 1868, with great alacrity; and the eagerness

with which he responded to that suggestion gave me the most comforting assurance that we shall have no dissensions upon that subject when the time shall come. I do not think it necessary, therefore, to insert such an amendment as this in the Constitution in order to secure the election of General Grant, if he should be presented as the Union candidate or by the country at large, without regard to party, as is by no means impossible. For wherever you find men who appreciate courage, skill, and patriotism in the field, magnanimity in the hour of victory, and wise moderation in political councils, there you will find men who will appreciate that illustrious commander as a candidate for any office which the American people may have to bestow. But upon these points I will not dwell.

I now come to another objection, which to my mind seems fatal to this amendment. This section seems to me to have been inserted for the express purpose of preventing the adoption by the southern States of any of the amendments proposed to the Constitution. I will not say that this was the motive of the committee in reporting it, but that, I think, is the result which its adoption by Congress will secure. The adoption of all the proposed amendments, this one included, by each of the southern States, is made in the bill reported by the committee a condition essential to their admission to representation in Congress. Now, the amendments are to be adopted by the Legislatures of the several States. The Legislatures are elected by all the people—those who have voluntarily adhered to the insurrection as well as those who have not—for the gentleman from Pennsylvania [Mr. BROOMALL] laid special stress upon the fact that the people are still allowed full control of their State governments.

These Legislatures, thus elected, are expected to ratify all these amendments, to concede an equality of civil rights, to concede a great reduction of their political power in changing the basis of representation, to concede the repudiation of their debts and the denial of compensation for their slaves; and for what consideration? What do we offer them in return for all these concessions? The right to be represented on this floor, provided they will also consent not to vote for

the men who are to represent them! Nay more, that they shall accept as the Representatives whom they thus get the right of having here men elected by a small minority of their people who are supposed and conceded to be hostile to them in political sentiment, and against whom they have been waging a bitter war! We offer them, in exchange for all these renunciations of political power and of material advantage, the privilege of being misrepresented in Congress by men in whose election they had no voice or vote, and with whose past political action and present political sentiments they have no sympathy whatever.

Why, sir, this not only "breaks the word of promise to the hope," it does not even "keep it to the ear." It is not merely a sham, it is a mockery. The very price by which we seek to induce their assent to these amendments, we snatch away from their hands the moment that assent is secured. Is there any man here who can so far delude himself as to suppose for a moment that the people of the southern States will accede to any such scheme as this? There is not one chance in ten thousand of their doing it.

Representation ceases to be of the slightest value to them under such conditions. They will not seek it or ask for it. They will infinitely prefer to take the chances of change in the political councils of the nation, to await the election of a Congress more propitious to their claims, especially under the comforting assurance which the gentleman from Pennsylvania [Mr. STEVENS] gave them some two months ago, when he said frankly that "it is of no importance by whom or when or how reconstruction is effected, for in three short years this whole Government will be in the hands of the late rebels and their northern allies." They will readily wait "three short years" for representation rather than purchase the mockery of it we offer them at such a price.

The gentleman from Ohio, [Mr. SCHENCK] in vindicating the policy of this exclusion of the southern people from the right of suffrage, insisted that it was necessary as a means of discipline; that they are not yet in a proper frame of mind to take part in the affairs of government; that they are at heart still un-

friendly and hostile to our authority and institutions; and that we must treat them as parents do unruly children, that we must flog them for their offenses and then exclude them from the family table or shut them up in a closet until they come to a better and more submissive mood. Well, sir, this might answer if the eight million people with whom we are dealing would consent to be treated as children, and to regard us here in Congress as standing *in loco parentis* toward them. They might in that case submit tamely to the chastisement we propose, and possibly profit by it. But they are not children. They are men, men tenacious of their rights, jealous of their position, brave, and proud of their bravery, of hot and rebellious tempers, and not at all likely to be subdued in spirit or won to our love by such discipline as the gentleman from Ohio proposes to inflict. We have chastised them already. We have defeated their hostility against the Government. And now what remains? They are to be our fellow-citizens. They must form part of the people of our country. They are to take part, sooner or later, in our Government unless we intend to discard the fundamental principle of that Government, the right of the people to govern themselves. And we cannot afford to have them, or to make them, sullen, discontented, rebellious in temper and in purpose, even if they are submissive in act.

We have nothing to do with the sickly sentimentality referred to by the gentleman from Pennsylvania [Mr. STEVENS] yesterday. Our object is not to deal in mercy toward them. We are to deal wisely—for their good and for our own. We are to make them friends, because we cannot afford to make or to keep them enemies. How shall we do this best? By what policy can it be best effected? By exclusion, by coercion, by hostile distrust? Can we coerce friendly feeling on the part of a hostile people? Has it ever been done? I would like the reader of history on this floor to point me to an instance in the records of any nation where great communities once disaffected have been brought back to friendly relations and feelings of kindly regard by such measures as are here proposed.

Has Ireland been thus appeased? Has Poland? Has Hungary? Has Venice?

Why, sir, if history teaches anything, if any principle is established by the concurrent annals of all nations and all ages, it is that sentiment cannot be coerced; that opinions, even, cannot be controlled by force; and that with any people fit to be free or to be the countrymen of men who are free, all such efforts defeat themselves and intensify and perpetuate the hostilities sought to be overcome. Ireland offers us a signal example of this, and I am amazed that members upon this floor can shut their eyes or close their minds to the lessons which her sad history teaches. England, for her harsh dealings with that unhappy land hundreds of years ago, is paying the penalty to-day and will for all time to come. By mistakes in policy precisely such in kind as we are making now, England, hundreds of years ago, planted in Ireland the seeds of that disaffection which, in spite of all her attempts to undo the wrong, in spite of abundant legislation in redress of grievances, and for the good of Ireland, from time to time bursts out into feeble but bitter insurrection, and which to-day blooms into that shadowy phenomenon of Fenianism, which terrifies one continent and puzzles and poisons the other.

No, sir, this is not the way to deal with disaffected States. I have no sympathy with those in the southern States who have just emerged from rebellion. Never for an instant have I felt or shown the slightest toleration for their crime. From the first moment their purpose of rebellion was made apparent until the hour they laid down their arms, within my humble sphere and by the feeble means which were all I could command, I have demanded, urged, and waged the most vigorous and determined war that could be made upon them. That war has proved successful. The rebellion has been suppressed. Our mission now is of a different kind and must be fulfilled by agencies of another sort.

These, sir, are my objections to the third of these five amendments. The other four commend themselves to my judgment and will receive my support.

